



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/817,158

04/02/2004

Marcelo Daniel Baru Fassio

NEUR122612

1165

27717

7590

05/12/2006

SEYFARTH SHAW LLP
55 E. MONROE STREET
SUITE 4200
CHICAGO, IL 60603-5803

EXAMINER

MANUEL, GEORGE C

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 05/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

10/817,158

Applicant(s)

BARU FASSIO ET AL.

Examiner

George Manuel

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9-18 and 20-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-18 and 20-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1, 33, 34, 37 and 38 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lynch '781.

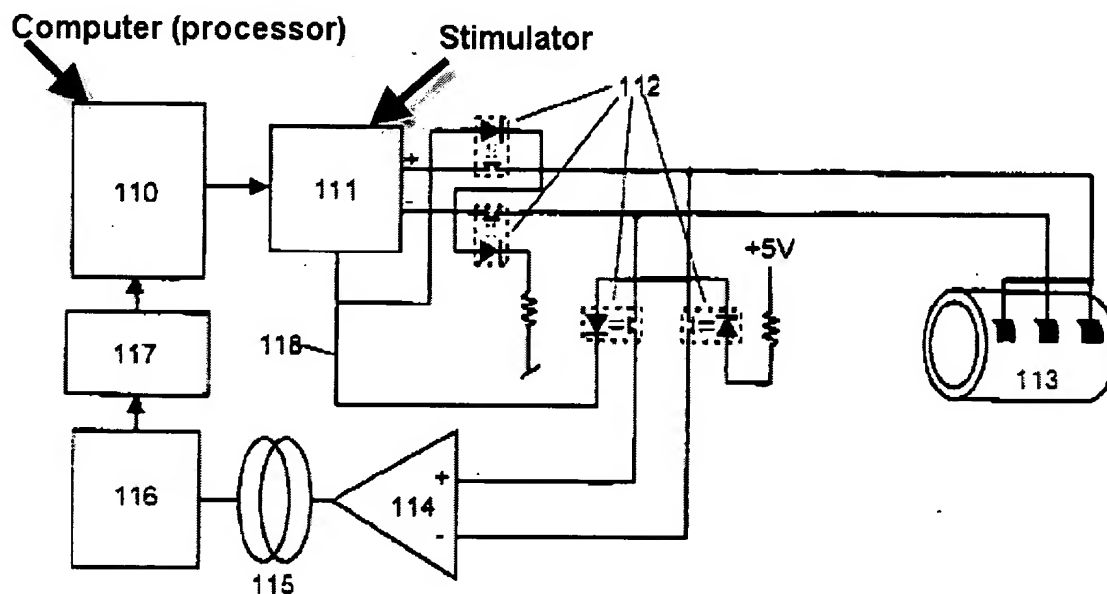
Lynch discloses a nerve cuff 2 and a processor comprising programmable current source 65 and signal conditioning circuits comprising gates 90-99 and switches 100. The control circuit 64 allows the programmable current source 65 to selectively activate the signal conditioning circuits. The examiner is interpreting the receive electrode data state 111 to comprise detecting a physiological event and if all data are correctly received, the control circuit 75 activates a deliver stimulation pulse at state 112.

Regarding claims 33 and 34, signal demodulator 63 communicates with an external programmer to adjust the operation of the processor comprising programmable current source 65.

Regarding claim 38, the examiner is interpreting the selection of programmable current source 65 to not allow a microdriver 60 to stimulate enables the life of the power source 62 to be lengthened.

Claims 1-5, 9-18, 22-30, 35 and 36 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Haugland et al '710.

Haugland et al disclose a nerve stimulation system comprising :



Regarding claim 2, Haugland et al teach rectifying and integrating in the pre-processing to remove artifacts from EMG signals. The examiner is interpreting a low input current amplifier to comprise amplifier 114. Further, the examiner is interpreting the device as being capable of performing the functions of responding to physiological events of a heel contact or toe lift event.

Claims 1, 31 and 32 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Andrews '781.

Andrews discloses a nerve cuff 34 and a power source 45 that is rechargeable. The examiner is interpreting a processor to comprise controller 58 and a stimulation circuit to comprise stimulator 54. The controller 58 is configured to selectively activate the stimulator based on detected physiological events signals from sensors 38. The examiner is interpreting the sensors 26 to comprise signal conditioning circuits.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 7, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haugland et al '710.

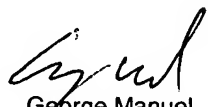
Haugland et al show all of the claimed features except for an accelerometer to indicate orientation of a patient's thigh. One of ordinary skill in the art would have found it obvious to use an accelerometer to indicate the angle of a patient's thigh because Haugland et al teach it is well known to use an accelerometer as a replacement for a

Art Unit: 3762

foot-switch (see [0025]) and motivation for the incorporation of an accelerometer can be found in [0024] where an advantage is the small size making an accelerometer suitable for implantation.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Manuel whose telephone number is (571) 272-4952.


George Manuel
Primary Examiner
Art Unit: 3762